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ADMITTED IN N.Y. AND N.J.

March 30, 2017

VIA ECF

Honorable Richard M. Berman
United States District Judge
Daniel Patrick Moynihan Courthouse
500 Pearl Street
New York, NY 10007

RE: UNITED STATES V. REZA ZARRAB, ET AL.,
S1 15 CR. 867 (RMB)

Dear Judge Berman:

This letter is respectfully submitted in response to the Court's order dated March 28, 2017, which relates to the Government's request for a Curcio hearing based on Messrs. Giuliani and Mukasey and their respective law firm's representation of various banks alleged by the Government to be victims of the Bank Fraud charge in the Indictment. For the convenience of the Court and the parties, we respond to the five questions posed by the Court in numerical order.

- 1. Whether Messrs. Giuliani and Mukasey and/or their respective law firms have been retained by, or on behalf of, Reza Zarrab as legal counsel or in some other capacity.**

Messrs. Giuliani and Mukasey have been retained by Mr. Zarrab.

- 2. If so, explain whether such engagement(s) in any way relate to and/or may impact the prosecution of Mr. Zarrab for the crimes alleged in the Indictment.**

The engagement of Messrs. Giuliani and Mukasey relates to the prosecution; it may impact the prosecution, but it has not, and whether it will is a matter of speculation. So far as to how it relates to the prosecution, that is protected by both attorney/client and work product privileges. Mr. Zarrab has not waived either of those privileges and will not.

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3. Whether Messrs. Giuliani or Mukasey intend or are required to file notices of appearance in this case.

Messrs. Giuliani and Mukasey do not intend to appear in Court on behalf of Mr. Zarbab as they are merely serving an ancillary role which requires no direct interaction with the Court. Accordingly, they are not required to file a notice of appearance, nor do they intend to do so.

4. Whether the roles of Messrs. Giuliani and Mukasey are legally distinguishable (for purposes of filing notices of appearance) from the role(s) of the eight defense attorneys who currently have notices of appearance on file (or the eight other defense counsel who have withdrawn from the case after filing such notices) and, if so, how are they different.

Yes, the roles of Messrs. Giuliani and Mukasey are different. Unlike former and current co-counsel in this case, Messrs. Giuliani and Mukasey do not represent Mr. Zarbab before this Court, are not involved in trial preparation or plea discussions with the United States Attorney's Office for the Southern District of New York, and they do not intend to appear before your Honor in any capacity in connection with this case.

5. Whether a Curcio hearing, as requested by the Government, should be held.

We do not believe a Curcio hearing should be held. The Second Circuit has cautioned, “[t]he danger of joint representation ‘is in what the advocate finds himself compelled to refrain from doing, not only at trial but also as to possible pretrial plea negotiations and in the sentencing process.’” United States v. Kliti, 156 F.3d 150, 154 (2d Cir. 1998) (quoting Holloway v. Arkansas, 435 U.S. 475, 490 (1978)). While we readily heed such a warning, a Curcio hearing is not necessary because Messrs. Giuliani and Mukasey will not be appearing in this Court on behalf of Mr. Zarbab before or during trial, will not be engaging in plea negotiations with the United States Attorney's Office for the Southern District of New York, and will not be involved in the sentencing process should there be a conviction. Accordingly, a Curcio hearing is not necessary.

Respectfully submitted,



Benjamin Brafman

cc: All counsel of record (by ECF)